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EXAMINER

NELSON, FREDA ANN

ART UNIT PAPER NUMBER

3639

DATE MAILED: 11/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/084,777

Applicant(s)

EGLEN ET AL.

Examiner

Freda A. Nelson

Art Unit

3639

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 9-14, 19-40, 42, 63-66, 68-71, 110-161, 171 and 182 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-14, 19-40, 42, 63-66, 68-71, 110-161, 171 and 182 is/are rejected.
- 7) ☒ Claim(s) 14 and 134-142 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

This is in response to a communication filed August 17, 2005 wherein:

Claims 9-14, 19-40, 42, 63-66, 68-71, 110-161, 171 and 182 were elected; and Claims 9-14, 19-42, 63-66, 68-71, 88, 110-161, 163-171 and 175-183 are currently pending.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 9, 11, 13, 19-20, 25, 26-31, 42, 63, 65, 68-69, 120-121, 124-125, 138-142, 147-151, 157-161, 171, and 182 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 9, 11, 13, and 19-20, the examiner is unable to determine by the claim language "at least one of the clients" if the "at least one of the clients" are the same "one or more clients" who ordered at the first price.

Claims 9, 11, 13, and 19-20, recite the limitations "the clients" in line 6 and "the orders" in lines 7-8. There is insufficient antecedent basis for these limitations in the claims.

Claim 9 recites the limitation "previous price levels" in line 12. There is insufficient antecedent basis for this limitation in the claim.

In claim 9, the examiner is unable to determine what the applicant is claiming by the claim language "determining profit at the first price is at least equal to a best profit for previous price levels with the processor". The examiner is unable to determine if the previous price levels are pertaining to the item ordered at the first price or other items sold using the same processor; and the examiner is unable to determine how the "best profit" is determined.

Claim 19 recites the limitation "orders" in line 14. There is insufficient antecedent basis for this limitation in the claim.

Claim 20 recites the limitation "orders" in lines 14 and 18. There is insufficient antecedent basis for this limitation in the claim.

Claims 25, 29, 31, 120, 125, 138-139, 142, 147-148, 151, 157-158, and 161, respectively, recite the limitation "the clients" in line 2. There is insufficient antecedent basis for this limitation in the claims.

Claims 26 and 121, recite the limitation "the deposits" in line 4. There is insufficient antecedent basis for this limitation in the claims.

Claims 27-28, recite the limitation "the deposits" in line 1. There is insufficient antecedent basis for this limitation in the claims.

Claims 30, 124, 133, 140, 149, and 159, recite the limitation "the clients" in line 3. There is insufficient antecedent basis for this limitation in the claims.

In claim 39, the examiner is unable to determine what the applicant is claiming by the claim language "the clients include a personal computer" because a personal computer cannot order items.

Claims 63, 65, and 68-69, respectively, recite the limitation "the clients" in line 6 and "the network" in line 9. There is insufficient antecedent basis for these limitations in the claims.

In claim 69, the examiner is unable to determine what the applicant is claiming by the claim language "around a best price", "around a best price", and "a small price difference".

Claims 122-123, recite the limitation "the deposits" in line 2. There is insufficient antecedent basis for this limitation in the claims.

Claim 150, recites the limitation "the client" in line 2. There is insufficient antecedent basis for this limitation in the claim.

In claim 157, the examiner is unable to determine what the applicant is claiming by the claim language "an account of first client".

Claim 182, recites the limitation "the clients" in line 6 and "the orders" in lines 11-12. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3639

2. Claims 9, 11-12, 21-25, 29-33, 38-39, 42, 110-120, 124-127, 132-133 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. (Patent Number 6,658,390).

As for claims 9 and 115, Walker et al. disclose a method, comprising:  
sending a first price of an item for sale from a processor to one or more clients over a network (FIG. 1);  
receiving one or more orders for the item at the first price from one or more of the clients (col. 4, lines 12-16; FIGS. 1 and 2);  
pricing the item at a second price with the processor based at least on the orders at the first price (col. 4, lines 12-16; FIGS. 1 and 2);  
sending the second price over the network to at least one of the clients (col. 4, lines 12-16; FIGS. 1 and 2);  
and wherein said pricing includes:  
increasing the first price to the second price, wherein the second price is greater than the first price (col. 4, lines 12-16; FIGS. 1 and 2).

Walker et al. do not disclose determining profit at the first price is at least equal to a best profit for previous price levels with the processor; and delivering the item to the clients that ordered the item at the first price. However, it is old and well known in the computer art to and well known in the business industry to deliver goods to buyers via the Internet, postal carrier, by hand etc. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Walker et al. to include the delivery feature in order to ensure the buyer receives the goods purchased.

As for claims 11 and 24, Walker et al. disclose a method, comprising:  
sending a first price of an item for sale from a processor to one or more clients over a network (abstract);  
receiving one or more orders for the item at the first price from one or more of the clients (col. 4, lines 12-16; FIGS. 1 and 2);  
pricing the item at a second price with the processor based at least on the orders at the first price (col. 4, lines 12-16; FIGS. 1 and 2);  
sending the second price over the network to at least one of the clients (col. 4, lines 12-16; FIGS. 1 and 2).

Walker et al. do not disclose reducing the first price to the second price, wherein the second price is less than the first price. However, it is old and well known in the business industry to maximize profits by lowering prices when sales are down. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Walker et al. to include the feature of lowering prices in order to ensure the seller optimizes sales and profits.

Walker et al. does not further disclose delivering the item to the clients that ordered the item at the first price. However, it is old and well known in the computer art

Art Unit: 3639

to and well known in the business industry to deliver goods to buyers via the Internet, postal carrier, by hand etc. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Walker et al. to include the delivery feature in order to ensure the buyer receives the goods purchased.

As for claim 12, Walker et al. does not disclose the method of claim 11, wherein the second price is halfway between the first price and a best price at which the best profit for the previous price levels was obtained, however these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The method of sending a first price of an item for sale from a processor to one or more clients over a network would be performed the same regardless of the data. Thus, descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ 2d 1031 (Fed. Cir. 1994). Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to reduce the first price to the second price, wherein the second price is less than the first price however lower the second price was to price because the difference in the second to the first does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

As for claim 21, Walker et al. disclose the method of claim 9, wherein the first price is an initial price (col. 3, lines 17-21).

As for claim 22, Walker et al. disclose the method of claim 21, further comprising receiving the initial price from a supplier of the item over the network (col. 3, lines 17-21).

As for claim 23, Walker et al. disclose the method of claim 21, further comprising setting the initial price with the processor based on historical data for the item (col. 1, lines 29-39).

As for claims 29-30, 124 and 132, Walker et al. disclose that if the triggering condition is an identified subsequent purchaser, the availability 550 may not be updated, and the newly available ticket may be transferred directly to the identified subsequent purchaser (col. 7, lines 34-37); and at step 908, the original purchaser's contact information 670 is retrieved and a buyout offer is transmitted to the original purchaser at step 910 (col. 7, lines 51-57).

Walker et al. does not expressly disclose that delivering the item includes transmitting the item from the processor to the clients that ordered the item at the first price over the network. However, it is old and well known in the business industry to transmit items (tickets) to customers. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of

Art Unit: 3639

Walker et al. to include the feature of transmitting goods (tickets) to promote fast deliveries.

As for claims 31-32, 125-126, and 133, Walker et al. disclose the method, further comprising:

wherein the clients that ordered the item at the first price include a first client (FIG. 1). Walker et al. does not disclose that the network includes an institutional network operated by an institution and the first client is operatively coupled to the processor through the institutional network;

identifying the first client as a member of the institution with the processor; and compensating the institution for the order of the item at the first price from the first client. However, it is old and well known in the business industry that institutions, especially colleges and universities sell event tickets. A member (student) can purchase an event ticket thus compensating the college for the event ticket. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Walker et al. include the feature of compensating any institution in order to permit members and/or employees to purchase goods from an institution and/ or employer.

As for claims 33 and 127, Walker et al. do not disclose the method of claim 32, wherein said compensating includes funding a scholarship at the educational institution, however these differences are only found in the nonfunctional descriptive material and are on not functionally involved in the steps recited. The method of sending a first price of an item for sale from a processor to one or more clients over a network would be performed the same regardless of the data. Thus, descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381,1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ 2d 1031 (Fed. Cir. 1994). Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to compensate an institution for goods because the type of compensation does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

As for claim 38, Walker et al. 390 disclose the method of claim 9, wherein the network includes the Internet (col. 3, lines 2-8).

As for claim 39, Walker et al. disclose the method of claim 9, wherein at least one of the clients include a personal computer (FIG. 1).

As for claim 42, Walker et al. does not disclose the method of claim 9, wherein said delivering includes physically transporting the item to the client. However, it is old and well known in the business industry to deliver goods to buyers via the Internet, postal carrier, or by hand etc. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention



Art Unit: 3639

of Walker et al. to include the delivery feature in order to ensure the buyer receives the goods purchased.

As for claims 110-114, Walker et al. does not disclose the method of claim 9, wherein the item includes music, text, a video content, a picture, or software, however these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The method of sending a first price of an item for sale from a processor to one or more clients over a network would be performed the same regardless of the data. Thus, descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ 2d 1031 (Fed. Cir. 1994). Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include pricing any item because the type of item does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

As for claim 116, Walker et al. does not disclose the method of claim 11, wherein the item includes music, however these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The method of sending a first price of an item for sale from a processor to one or more clients over a network would be performed the same regardless of the data. Thus, descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ 2d 1031 (Fed. Cir. 1994). Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include pricing any item because the type of item does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

As for claim 117, Walker et al. disclose the method of claim 11, wherein the first price is an initial price (col. 3, lines 17-21).

As for claim 118, Walker et al. disclose the method of claim 11, further comprising receiving the initial price from a supplier of the item over the network (col. 3, lines 17-21).

As for claim 119, Walker et al. disclose the method of claim 21, further comprising setting the initial price with the processor based on historical data for the item (col. 1, lines 29-39).

As for claim 120, Walker et al. disclose the method of claim 20, further comprising: wherein the clients that ordered the item at the first price include a first client (FIG. 1).

Art Unit: 3639

3. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. in view of Kaminsky et al. (US PG Pub. 2001/0047308).

As for claim 10, Walker et al. '390 does not disclose the method of claim 9, wherein said increasing includes setting the second price as a random percentage above the first price. Kaminsky et al. disclose that the merchant sets the percentage increment by which a current price 38 of a product can move up or down (paragraph 0050); and the merchant establishes the business rules i.e. percentage movement of the product prices. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Walker et al. '390 to include the feature of Kaminsky et al. permitting the use of percentage increases of current prices in order to maximize profits.

4. Claims 19-20, 143-146, 148-156, 158-161 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al., in view of Van Luchene et al. (Patent Number 6,687,679).

As for claims 19-20, and 156, Walker et al. disclose a method, comprising:  
sending a first price of an item for sale from a processor to one or more clients over a network (abstract);  
receiving one or more orders for the item at the first price from one or more of the clients (col. 4, lines 12-16; FIGS. 1 and 2);  
pricing the item at a second price with the processor based at least on the orders at the first price (col. 4, lines 12-16; FIGS. 1 and 2);  
sending the second price over the network to at least one of the clients (abstract); and  
receiving one or more second orders for the item at the second price (col. 8, lines 1-7).

Walker et al. does not disclose wherein said pricing includes determining the second price based on time between the one or more orders at the first price and the one or more second orders at the second price;  
wherein said pricing includes determining an average time between orders; and  
wherein said pricing includes:  
determining the time between the one or more orders at the first price and the one or more second orders at the second price is greater than the average time between orders; and  
decreasing the first price to the second price, wherein the second price is less than the first price. Van Luchene et al. disclose entry 1400B shows that a condition for increasing a discount of a customer with a customer rating of "A" includes

Art Unit: 3639

having at least one transaction per two week time period wherein entry 1400B also shows that another condition is a transaction price of at least \$100 wherein the benefit indicated in entry 1400B is a 0.5% discount increment (col. 16, lines 8-13); and table 700 also defines fields for each of the entries 702, 704 and 706, which specify (i) a customer identifier 710 that identifies the customer, (ii) a name 715 of the customer, (iii) an address 720 of the customer, (iv) a discount 725 earned by the customer to date, and (v) a date of the last transaction 730 of the customer wherein each date of the last transaction 730 is used in determining the corresponding discount 725 (col. 9, lines 18-25). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Walker et al. to include the feature of Van Luchene et al. in order to provide a way of determining discounts and/ or price changes in accordance to the timing of purchases.

As for claim 143, Walker et al. does not disclose the method of claim 19, wherein the item includes music, however these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The method of sending a first price of an item for sale from a processor to one or more clients over a network would be performed the same regardless of the data. Thus, descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ 2d 1031 (Fed. Cir. 1994). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include pricing any item because the type of item does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

As for claim 144, Walker et al. disclose the method of claim 19, wherein the first price is an initial price (col. 3, lines 17-21).

As for claim 145, Walker et al. disclose the method of claim 144, further comprising receiving the initial price from a supplier of the item over the network (col. 3, lines 17-21).

As for claim 146, Walker et al. disclose the method of claim 144, further comprising setting the initial price with the processor based on historical data for the item (col. 1, lines 29-39).

As for claims 148-149, Walker et al. disclose that if the triggering condition is an identified subsequent purchaser, the availability 550 may not be updated, and the newly available ticket may be transferred directly to the identified subsequent purchaser (col. 7, lines 34-37); and at step 908, the original purchaser's contact information 670 is retrieved and a buyout offer is transmitted to the original purchaser at step 910 (col. 7, lines 51-57).

Art Unit: 3639

Walker et al. does not expressly disclose the method of claim 19, wherein delivering the item includes transmitting the item from the processor to the clients that ordered the item at the first price over the network. However, it is old and well known in the business industry to transmit items (tickets) to customers. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Walker et al. to include the feature of transmitting goods (tickets) to promote fast deliveries.

As for claim 150, Walker et al. does not disclose the method of claim 19, wherein said delivering includes physically transporting the item to the client. However, it is old and well known in the business industry to deliver goods to buyers via the Internet, postal carrier, or by hand etc. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Walker et al. to include the delivery feature in order to ensure the buyer receives the goods purchased. 150. (Previously presented) The method of claim 19, wherein said delivering includes physically transporting the item to the client.

As for claim 151, Walker et al. disclose the method of claim 19, further comprising: wherein the clients that ordered the item at the first price include a first client (FIG. 1). Walker et al. does not disclose that the network includes an institutional network operated by an institution and the first client is operatively coupled to the processor through the institutional network;

identifying the first client as a member of the institution with the processor; and compensating the institution for the order of the item at the first price from the first client. However, it is old and well known in the business industry that institutions, especially colleges and universities sell event tickets. A member (student) can purchase an event ticket thus compensating the college for the event ticket. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Walker et al. include the feature of compensating any institution in order to permit members and/or employees to purchase goods from an institution and/ or employer.

As for claim 152, Walker et al. does not disclose the method of claim 11, wherein the item includes music, however these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The method of sending a first price of an item for sale from a processor to one or more clients over a network would be performed the same regardless of the data. Thus, descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ 2d 1031 (Fed. Cir. 1994). Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include pricing any item because the type of item does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

Art Unit: 3639

As for claim 153, Walker et al. disclose the method of claim 20, wherein the first price is an initial price (col. 3, lines 17-21).

As for claim 154, Walker et al. disclose the method of claim 153, further comprising receiving the initial price from a supplier of the item over the network (col. 3, lines 17-21).

As for claim 155, Walker et al. disclose the method of claim 153, further comprising setting the initial price with the processor based on historical data for the item (col. 1, lines 29-39).

As for claims 158-159, Walker et al. disclose that if the triggering condition is an identified subsequent purchaser, the availability 550 may not be updated, and the newly available ticket may be transferred directly to the identified subsequent purchaser (col. 7, lines 34-37); and at step 908, the original purchaser's contact information 670 is retrieved and a buyout offer is transmitted to the original purchaser at step 910 (col. 7, lines 51-57).

Walker et al. does not expressly disclose that delivering the item includes transmitting the item from the processor to the clients that ordered the item at the first price over the network. However, it is old and well known in the business industry to transmit items (tickets) to customers. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Walker et al. to include the feature of transmitting goods (tickets) to promote fast deliveries.

As for claim 160, Walker et al. does not disclose the method of claim 9, wherein said delivering includes physically transporting the item to the client.

However, it is old and well known in the business industry to deliver goods to buyers via the Internet, postal carrier, or by hand etc. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Walker et al. to include the delivery feature in order to ensure the buyer receives the goods purchased. 160. (Previously presented) The method of claim 20, wherein said delivering includes physically transporting the item to the client.

As for claim 161, Walker et al. disclose the method, further comprising:  
wherein the clients that ordered the item at the first price include a first client (FIG. 1). Walker et al. does not disclose that the network includes an institutional network operated by an institution and the first client is operatively coupled to the processor through the institutional network;  
identifying the first client as a member of the institution with the processor;  
and compensating the institution for the order of the item at the first price from the first client. However, it is old and well known in the business industry that institutions, especially colleges and universities sell event tickets. A member (student)

Art Unit: 3639

can purchase an event ticket thus compensating the college for the event ticket. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Walker et al. include the feature of compensating any institution in order to permit members and/or employees to purchase goods from an institution and/or employer.

Claims 25-27, 34-37, 40, 121-122, 128-131, 147 and 157 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al., in view of Van Luchene et al. (Patent Number 6,687,679), in further view of Pallakoff (Patent Number 6,269,343).

As for claims 25, 147, and 157, Walker et al. disclose the method of claim 20, further comprising: wherein the clients that ordered the item at the first price include a first client (FIG. 1).

Walker et al. does not disclose debiting at least the first price from an account of the first client with the processor. Pallakoff et al. discloses that buyers respond to offers using client terminals (col. 3, lines 22-27); and in a situation where offers are accepted (block 37) the buyers' credit cards are charged (col. 5, lines 38-40). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Walker et al. to include the feature of Pallakoff in order to permit the buyers to make purchases online and complete the transactions electronically.

As for claims 26-27, 34-35, 121-122, and 128-129, Walker et al. do not disclose the method, further comprising: registering the first client; receiving one or more deposits from the first client; and crediting the deposits to the account of the first client with the processor before said debiting. Pallakoff discloses registering the first client (col. 1, lines 17-28); receiving one or more deposits from the first client (col. 12, lines 30-36); and crediting the deposits to the account of the first client with the processor before said debiting (col. 12, lines 30-36). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Walker et al. to include the feature of Pallakoff et al. in order to permit the buyers to create accounts from which to make payments for purchases.

As for claims 36-37, 40 and 130-131, Walker et al. disclose the method wherein the identifier includes an email address and a network address (col. 7, lines 1-4); and wherein sending the first price includes encoding the first price into a web page.

Art Unit: 3639

Claims 28 and 123 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al., in view of Van Luchene et al. (Patent Number 6,687,679), in further view of Pallakoff et al. (Patent Number 6,269,343), still in further view of Goulet et al. (Patent Number 2004/0068459).

As for claim 28 and 123, Walker et al. does not disclose the method wherein said receiving the deposits includes receiving payment through a third party. Goulet et al. disclose that via the corresponding interfaces the third party is notified of a potential transaction, enabling participation in the offering and the closing of the transaction. Third parties may also include enabling systems such as payment facilitators, reservations systems, logistics companies and credit card companies (paragraph [0050]). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Walker et al. to include the feature of Goulet et al. in order to receive online payments by credit card.

5. Claims 63-66, 68-70, 171, and 182 are rejected under 35 U.S.C. 103(a) as being unpatentable over White (Patent Number 6,644,547) in view of Phillips et al. (US PG Pub 2002/0116348).

As for claims 63-64, White discloses an apparatus comprising:  
memory containing at least one item, wherein the item includes media content (col. 7, lines 66 through col. 8, line 3);

a processor operatively couple to said memory and responsive to input over a network from one or more clients, said processor being operable to dynamically adjust pricing of the item, said processor being operable to deliver the item from memory to the clients that order the item at a dynamically adjusted price (col. 7, lines 48-54);

the network, wherein the network includes the Internet (col. 8, lines 3-7); and wherein said processor is operable to increase the pricing of the item when the profit at a current price for the item is at least greater than a previous best profit for the item.

White does not disclose that the processor is operable to adjust the pricing of the item by comparing profits generated by the item at different price levels. Phillips et al. disclose that the dynamic pricing system 100 then determines costs for the product and combines the costs result with the predicted sales at the different price levels to determine a set of optimal, profit maximizing prices for a product in different markets. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of White to include the feature of Phillips in order to maximize profits.

Art Unit: 3639

White does not further disclose that said increasing includes setting the second price as a random percentage above the first price. Kaminsky et al. disclose that the merchant sets the percentage increment by which a current price 38 of a product can move up or down (paragraph 0050); and the merchant establishes the business rules i.e. percentage movement of the product prices. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of White to include the feature of Kaminsky et al. permitting the use of percentage increases of current prices in order to maximize profits.

As for claims 65-66, White discloses an apparatus comprising:  
memory containing at least one item, wherein the item includes media content (col. 7, lines 66 through col. 8, line 3);

a processor operatively couple to said memory and responsive to input over a network from one or more clients, said processor being operable to dynamically adjust pricing of the item, said processor being operable to deliver the item from memory to the clients that order the item at a dynamically adjusted price (col. 7, lines 48-54); and the, network, wherein the network includes the Internet (col. 8, lines 3-7).

White does not disclose that the processor is operable to adjust the pricing of the item by comparing profits generated by the item at different price levels. Phillips et al. disclose that the dynamic pricing system 100 then determines costs for the product and combines the costs result with the predicted sales at the different price levels to determine a set of optimal, profit maximizing prices for a product in different markets. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of White to include the feature of Phillips in order to maximize profits.

White does not further disclose that said increasing includes setting the second price as a random percentage above the first price. Kaminsky et al. disclose that the merchant sets the percentage increment by which a current price 38 of a product can move up or down (paragraph 0050); and the merchant establishes the business rules i.e. percentage movement of the product prices. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of White to include the feature of Kaminsky et al. permitting the use of percentage increases of current prices in order to maximize profits.

As for claim 68, White discloses an apparatus comprising:  
memory containing at least one item, wherein the item includes media content (col. 7, lines 66 through col. 8, line 3);

a processor operatively couple to said memory and responsive to input over a network from one or more clients, said processor being operable to dynamically adjust pricing of the item, said processor being operable to deliver the item from memory to the clients that order the item at a dynamically adjusted price; and the, network, wherein the network includes the Internet (col. 8, lines 3-7).

White does not disclose that the processor is operable to adjust the pricing of the item by comparing profits generated by the item at different price levels. Phillips et al.



Art Unit: 3639

disclose that the dynamic pricing system 100 then determines costs for the product and combines the costs result with the predicted sales at the different price levels to determine a set of optimal, profit maximizing prices for a product in different markets. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of White to include the feature of Phillips in order to maximize profits.

White does not further disclose adjusting the pricing of the item around a best price at which a best profit for the item was previously obtained when there is a small price difference between the current price and the best price. Kaminsky et al. disclose that the merchant sets the percentage increment by which a current price 38 of a product can move up or down (paragraph 0050); and the merchant establishes the business rules i.e. percentage movement of the product prices. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of White to include the feature of Kaminsky et al. permitting the use of percentage increases of current prices in order to maximize profits.

As for claim 69, White discloses an apparatus comprising:  
memory containing at least one item, wherein the item includes media content (col. 7, lines 66 through col. 8, line 3);  
a processor operatively couple to said memory and responsive to input over a network from one or more clients, said processor being operable to dynamically adjust pricing of the item, said processor being operable to deliver the item from memory to the clients that order the item at a dynamically adjusted price;  
the network, wherein the network includes the Internet (col. 8, lines 3-7);  
wherein said processor is operable to randomly adjust the pricing of the item around the best price at which a best profit for the item was previously obtained when there is when there is a small price difference between the current price and the best price.

White does not disclose that the processor is operable to adjust the pricing of the item by comparing profits generated by the item at different price levels. Phillips et al. disclose that the dynamic pricing system 100 then determines costs for the product and combines the costs result with the predicted sales at the different price levels to determine a set of optimal, profit maximizing prices for a product in different markets. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of White to include the feature of Phillips in order to maximize profits.

As for claim 70, White et al. does not disclose that the processor is operable to randomly adjust the pricing within a specified range around the best price, however claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function, *In re Danly* 263 F.2d 844, 847, 120 USPQ 582, 531 (CCPA 1959). A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural

Art Unit: 3639

limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1657 (bd Pat. App. & Inter. 1987). Thus the structural limitations of claim 69 including a memory and a processor being operable to dynamically adjust pricing of the item are disclosed in White et al. described herein. Also as described the limitations of the claim do not distinguish the claimed apparatus from the prior art.

As for claim 171, White discloses an apparatus, comprising:  
memory containing at least one item (col. 7, lines 66 through col. 8, line 3);  
a processor operatively coupled to said memory and responsive to input over a network from one or more clients, said processor being operable to dynamically adjust pricing of the item, said processor being operable to deliver the item from memory to the clients that order the item at a dynamically adjusted price;  
a supplier device operatively coupled to said processor, wherein at least a portion of said memory containing the item is located on said supplier device (FIG. 1);  
and

wherein said processor is operable to facilitate peer to peer transfer of the item from said supplier device to the clients that order the item.

White does not disclose that the processor is operable to adjust the pricing of the item by comparing profits generated by the item at different price levels. Phillips et al. disclose that the dynamic pricing system 100 then determines costs for the product and combines the costs result with the predicted sales at the different price levels to determine a set of optimal, profit maximizing prices for a product in different markets. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of White to include the feature of Phillips in order to maximize profits. White does not further disclose that said processor is operable to identify one or more of the clients that order the item as members of an institution; and wherein said processor is operable to compensate the institution based on the orders received from the members; and wherein said processor is operable to facilitate peer to peer transfer of the item from said supplier device to the clients that order the item. However, it is old and well known in the business industry that institutions, especially colleges and universities sell event tickets. A member (student) can purchase an event ticket thus compensating the college for the event ticket. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of White et al. to include the feature of compensating any institution in order to permit members and/or employees to purchase goods from an institution and/ or employer.

As for claim 182, Walker et al disclose an apparatus, comprising:  
memory containing at least one item (col. 7, lines 66 through col. 8, line 3);  
wherein the item includes media content (col. 9, lines 26-29);  
a processor operatively coupled to said memory and responsive to input over a network from one or more clients, said processor being operable to dynamically adjust pricing of the item, said processor being operable to deliver the item from memory to the clients that order the item at a dynamically adjusted price; and

Art Unit: 3639

a supplier device operatively coupled to said processor, wherein at least a portion of said memory containing the item is located on said supplier device (FIG. 1).

White does not disclose that the processor is operable to adjust the pricing of the item by comparing profits generated by the item at different price levels. Phillips et al. disclose that the dynamic pricing system 100 then determines costs for the product and combines the costs result with the predicted sales at the different price levels to determine a set of optimal, profit maximizing prices for a product in different markets. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of White to include the feature of Phillips in order to maximize profits. White does not further disclose that said processor is operable to identify one or more of the clients that order the item as members of an institution; and wherein said processor is operable to compensate the institution based on the orders received from the members. However, it is old and well known in the business industry that institutions, especially colleges and universities sell event tickets. A member (student) can purchase an event ticket thus compensating the college for the event ticket. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of White et al. to include the feature of compensating any institution in order to permit members and/or employees to purchase goods from an institution and/ or employer.

Claim 71 is rejected under 35 U.S.C. 103(a) as being unpatentable over White (Patent Number 6,644,547) in view of Phillips et al. (US PG Pub 2002/0016348), in further view of Kaminsky et al. (US PG Pub. 2001/0047308).

As for claim 71, White does not disclose et al. the apparatus of claim 70, wherein the small price difference is one-percent of the best price. Kaminsky et al. disclose that the merchant sets the percentage increment by which current price 38 of a product can move up or down; and accordingly, after each purchase, current price 38 of the product will rise by a certain percentage increment (i.e, 1% rise), again as set by the seller. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of White to include the feature of Kaminsky et al. in order to establish business rules i.e. price and percentage movement of the product prices (Kaminsky et al.; paragraph [0022]).

### **Conclusion**

6. The following is an examiner's statement of reasons for allowance:

A) The prior art for example:

(1) Walker et al. (Patent Number 6,658,390) disclose a system and method for reselling a previously sold product.

(2) Phillips et al. (US PG Pub 2002/0116348) disclose a dynamic pricing system.

(3) Kaminsky et al. (US PG Pub. 2001/0047308) disclose concurrent dynamic pricing marketing and selling system.

(4) Pallakoff (Patent Number 6,269,343), which an on-line marketing system and method.

However, in regard to claims 13-14 and 134-142, the prior art does not teach or suggest specific manner in which the price is dynamically adjusted as recited in these claims.

Claims 14 and 134-142 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. As allowable subject matter has been indicated, applicant's response must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 C.F.R. § 1.111(b) and section 707.07(a) of the M.P.E.P.

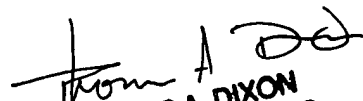
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Freda A. Nelson whose telephone number is (571) 272-7076. The examiner can normally be reached on Monday - Friday.

Art Unit: 3639

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FAN 11/14/2005

A handwritten signature in cursive script that reads "Arda Nelson".A handwritten signature in cursive script that reads "Thomas A. Dixon".  
**THOMAS A. DIXON**  
**PRIMARY EXAMINER**